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In the Matter of

Restoring Internet Freedom

Before the

FEDERAL COMMUNICATIONS COMMISSION

Wireline Competition Bureau

WC Docket N° 17-108

COMMENTS IN OPPOSITION TO PROPOSED RULEMAKING

INTRODUCTION

These comments in opposition to the proposed rulemaking are submitted by Scaramella & Hoofnagle, Computer Division, which is a developer of computer software that manages professional practices and service businesses, and by Adept Data Systems, L.L.C., the affiliated exclusive publisher of that software. A free and open Internet that carries and routes all data packets with equal priority, efficiency, reliability, speed, and quality is very important to the operation of that management software, and therefore, to its developer, publisher, and licensees. The proposed rulemaking would degrade the Internet as it now exists, and would impede its future development, all contrary to the public interest.

COMMENTS

1. Broadband Internet service providers operate as utilities providing the telecommunication service of common carriage of packetized data, and should be regulated as common carriers under Title II of the Telecommunications Act.

Many years have passed since divestiture of the original telecommunications industry, which has made it too easy to forget that the regional bell operating companies (RBOCs) remain the product of monopoly, regardless of their current form. Those companies still enjoy monopoly power in the broadband services industry, and carry the majority of packetized data traffic that flows across the Internet, especially across fiberoptic cable systems. In virtually all regions, the only real competition is from copper coaxial cable operators, themselves being remnants of old exclusive cable television franchises created by government agencies. Competition from coaxial cable system operators is limited by the technical limitations of the copper-based broadcast-oriented medium those operators still use. In regions where such competition is viable, the market is at best an asymmetrical oligopoly with the lesser market participants only competing successfully in geographical areas beyond the fringes of installed fiberoptic distribution systems, or at particular service locations maintained by the inertia of incumbency. Such markets operate efficiently and in the public interest only when effectively regulated as utilities.

2. The dominant regional broadband Internet service providers operate as common carriers of packetized data rather than as providers of information services, and should be regulated as common carriers under Title II of the Telecommunications Act.

Internet services have evolved away from anything that even resembles information services, and have evolved toward pure common carriage of data packets. In years past, Internet service providers regularly bundled services such as website hosting, remote shared WiFi access to the Internet, and email and FTP server hosting. One-by-one, each of these bundled services have been dropped, without any reduction in service fees. Currently, our internet service provider, which is Verizon, supplies only Internet service over Ethernet on an RJ-45 port on an optical network terminal that is dynamically assigned an Internet Protocol Version 4 address by a Verizon controlled DHCP server. Domain Name System services are provided by a separate company, although Verizon continues to operate DNS servers as a way to generate revenue from advertising. No information is provided to us as a customer under the Internet service contract. Verizon only transports data packets to and from our premises over its network as a common carrier.

Verizon prevents local hosting of services by blocking traffic to well known service port numbers. This port blocking is only removed with the payment of expensive extra service fees for assignment of a fixed IPv4 address. Version 6 IP addresses, which are extremely abundant in the defined address space, are unavailable. Such artificially created scarcity that supports inflated prices is a hallmark of monopoly power.

All this is closely analogous to the other types of public infrastructure. The parallels to the natures of the roads that carry vehicular traffic, the wires that carry electric power, and the pipes that carry water, are unmistakable. Digital telecommunication services are as much public utilities as analog telecommunication services were when they were a primary means of communication. Today, broadband Internet service is essential to the conduct of business, to the day-to-day life of citizens, and to public discourse that is fundamental to our system of governance. Internet service providers occupy a role that is too important to be governed by profit motive. Regulation as common carriers under Title II of the Telecommunications Act is necessary and appropriate to preserve and protect the public interest.

3. To incentivize continuing development of the digital infrastructure, broadband Internet service providers should be constrained to compete for new or expanded service contracts by providing superior carriage of all data streams uniformly.

A main issue underlying the proposed rulemaking is whether Internet service providers should be allowed to give priority to certain Internet traffic in exchange for additional fees. It is undeniable that such "fast lanes" only have extra commercial value if the other lanes are inadequate to carry the traffic at sufficient speed. This economic reality was long a disincentive to substantial improvement of the public digital infrastructure of the USA. That disincentive was removed by the Commission's Report and Order in the Matter of Protecting and Promoting the Open Internet, often described as "Net Neutrality."

The currently proposed rulemaking would restore that disincentive. Net Neutrality incentivizes continuing development of the digital infrastructure in ways that increase reliability and speed and decrease latency and jitter. Such service enhancements can attract new customers and justify the cost of new or increased

services to current customers. If that incentive to improve the digital infrastructure is maintained, then it is likely to result in at least parity with other parts of the world the USA has lagged behind. The Internet has become essential to our personal and professional lives, and will become more so over time. The domestic digital infrastructure that enables the Internet is critical to the competitiveness of the USA. The rule currently in force protects and promotes an open Internet, which is in the public interest.

Proponents of the proposed rulemaking have argued that investment has decreased since the current rule was adopted. Those arguments presume a causal relationship without rational explanation. A better reasoned causal hypothesis is that Internet service providers enjoying monopoly power have a strong financial incentive to squeeze additional revenue from current infrastructure without having to make additional investments. There is little or no incentive for Internet service providers to compete based upon service quality when customers have no better alternatives.

For all these reasons, broadband Internet service providers should be constrained to compete for new or expanded service contracts by providing superior carriage of all data streams uniformly.

4. Prohibition against data packet prioritization for additional service fees promotes a level field of competition for market participants of all sizes.

Scaramella & Hoofnagle, Computer Division and Adept Data Systems, L.L.C. respectively develop and publish software applications that primarily operate as client-server based relational data management systems. Communications between the client and server applications use the Internet Protocol. Data packets regularly flow across the public Internet when multiple remote client workstations intercommunicate with centralized compute servers. These systems can only function reliably and efficiently when the transportation of data packets between clients and servers is reliable and efficient.

Under the current Net Neutrality rule, the data packets sent and received by our software are entitled to the same quality of transport service as is provided for the carriage of any other data packets flowing across the Internet. This ensures a level field of competition against competitive software and related contract services.

If Internet service providers are allowed to provide priority service for other data packets for additional service fees, then large incumbent competitors will be unfairly advantaged due to their ability to purchase such enhanced service in bulk. That would significantly impede competition by discouraging market entry and expansion.

Licensees of our software most commonly operate their own compute servers that host our software. Those servers are typically located on our licensees' local area networks which are connected to the Internet through security gateways that provide access from remote locations also connected to the Internet. Many of our licensees are small firms that could not bear the cost of paying their Internet service providers additional fees that would be charged for data packet prioritization. Our licensees now rely upon equal treatment of their data packets. The bandwidth of the Internet is finite. Assigning priority to certain data packets necessitates reducing the priority given to other data packets. Paid packet prioritization would unfairly disadvantage many of our licensees, which would reduce the value and utility of our software.

The interest of the public in fostering fair competition would be served, and the mission of the Commission would be furthered, by continuation of the current rule that requires common carriage of all data packets with equal service quality. If that current regulatory scheme is maintained, as we assert it should be, then future Internet service improvements will be available to all, rather than only to the select few incumbents who can pay for priority service.

CONCLUSION

Wherefore, for the reasons stated above, it is requested that the proposed rulemaking be rejected by the Commission.

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